B104
(Rev. 8/87)

ADVERSARY PROCEEDING

ADVERSARY PROCEEDING COVER SHEET

(Instructions on Reverse)

ADVERSARY PROCEEDING NUMBER
(Court Use Only)

PLAINTIFFS	DEFENDANTS 01-4034
JOHN ELMER HUGHES GLADYS NANNEY HUGHES	FORD MOTOR CREDIT COMPANY
ATTORNEYS (Firm Name, Address, and Telephone No.) O. MAX GARDNER III P.O. BOX 1000 SHELBY, N.C. 28151-1000	ATTORNEYS (If Known)

FILED
US Bankruptcy Court
WDNC, Charlotte, NC
SEP 26 2001
Geraldine Treutelaar Crockett, Clerk
/pwp

PARTY (Check one box only) ☐ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☒ 3 U.S. NOT A PARTY

CAUSE OF ACTION (Write a brief statement of cause of action, including all U.S. Statutes involved)

COMPLAINT SEEKING DAMAGES PURSUANT TO 11 U.S.C. SECTIONS 524,542,362, THE N.C. RETAIL INSTALLMENT ACT, N.C.G.S. SECTION 75-50, et. SEQ. FOR FAILURE TO PRODUCE A TITLE WITH THE LIEN DULY RELEASED

NATURE OF SUIT

(Check the one most appropriate box only)

☐ 454 To Recover Money or Property

☐ 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest In Property

☐ 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property

☐ 424 To object or to revoke a discharge 11 U.S.C. §727

☐ 455 To revoke an order of confirmation of a Chap. 11 or Chap. 13 Plan

☐ 426 To determine the dischargeability of a debt 11 U.S.C. §523

☐ 434 To obtain an injunction or other equitable relief.

☐ 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan.

☐ 456 To obtain a declaratory judgement relating to any of foregoing causes of action

☐ 459 To determine a claim or cause of action removed to a bankruptcy court

☒ 498 Other (Specify)

TO OBTAIN A PROPER TITLE WITH THE LIEN DULY RELEASED

ORIGIN OF PROCEEDINGS (Check one box only) ☒ 1. Original Proceeding ☐ 2. Removed Proceeding ☐ 4. Reinstated or Reopened ☐ 5. Transferred from Another Bankruptcy ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND	NEAREST THOUSAND	OTHER RELIEF SOUGHT	☐ JURY DEMAND
	$ 10,000+	DAMAGES & LIEN RELEASE ON TITLE	

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES

NAME OF DEBTOR		BANKRUPTCY CASE NO.
JOHN & GLADYS HUGHES		96-40076
DISTRICT IN WHICH CASE IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE
WESTERN DISTRICT OF NC	SHELBY	MARVIN R. WOOTEN

RELATED ADVERSARY PROCEEDING (IF ANY)

PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT	DIVISIONAL OFFICE	NAME OF JUDGE

FILING FEE (Check one box only) ☐ FEE ATTACHED ☒ FEE NOT REQUIRED ☐ FEE IS DEFERRED

DATE	PRINT NAME	SIGNATURE OF ATTORNEY (OR PLAINTIFF)
09-25-01	O. Max Gardner III	O. M.

©1998 Zimmerman & Mohr, LLC [1-800-998-2424] (excluding U.S. Government forms)

FILED
U.S. Bankruptcy Court
WDNC, Charlotte, NC
SEP 26 2001
Geraldine Treutelaar
Crockett, Clerk
/pwp

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

IN THE MATTER OF:

NAME: **HUGHES, JOHN ELMER**
HUGHES, GLADYS NANNEY

Chapter 13 No. 96-40076
Our File No. 8872

ADDRESS: **2116 PICO STREET**
SHELBY, NC 28150

SSN: **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 & 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**

Debtors.

JOHN ELMER HUGHES and wife,
GLADYS NANNEY HUGHES,

Adversary Proc. No. 01-4034

Plaintiffs,

versus

FORD MOTOR CREDIT COMPANY,

Defendant.

Complaint Seeking Damages in Non-Core Adversary Proceeding

Introduction

1. This is an action for actual and punitive damages filed by the debtors for the failure of the Defendant to release its lien on the title to a motor vehicle in compliance with applicable North Carolina law and for the adverse impact such State law violations have had on the applicable provisions of Title 11 of the United States Code.

2. This action is also filed to enforce the Order of Confirmation duly entered in this Chapter 13 case, the Order of Discharge duly entered in this case, and to enforce and to implement other Bankruptcy Code provisions and Rules related thereto, and to prevent an abuse of process and to preclude the frustration of the orderly discharge of the claims in this case.

Jurisdiction

3. The Plaintiffs are informed and believe and therefore allege that jurisdiction is conferred on this Court pursuant to the provisions of Section 1334 of Title 28 of the United Stated Code in that this proceeding arises in and is related to the above-captioned Chapter 13 case under Title 11 and concerns property of the debtors in that case.

4. The Plaintiffs further allege that this Court has supplemental jurisdiction to hear all state law claims pursuant to Section 1367 of Title 28 of the United States Code.

5. Venue lies in this District pursuant to Section 1391(b) of Title 28 of the United States Code.

6. The Plaintiffs are informed and believe and therefore allege that this matter is a non-core proceeding and the Plaintiffs consent to the entry of a final order in this proceeding by the Bankruptcy Judge.

Parties

7. The Plaintiffs in this case were and are debtors under Chapter 13.

8. The Defendant, Ford Motor Credit Company, (hereinafter referred to as "FMCC") is a corporation engaged in the business of consumer financing for motor vehicle loans and is incorporated in some state other than the State of North Carolina; however, FMCC does substantial business in the State of North Carolina.

Factual Allegations

9. Before the commencement of the Chapter 13 case, the Plaintiffs pledged security in a 1989 Ford Festiva to FMCC and FMCC had its security interest duly perfected by having its lien noted on the title to the vehicle issued by the North Carolina Division of the Motor Vehicles. This claim was treated under the confirmed plan as a secured claim. The account was assigned the number CHA258AR44 by FMCC.

10. The Chapter 13 case of John Elmer Hughes and Gladys Nanney Hughes, the Plaintiffs herein, was commenced by the filing of a voluntary petition with the Clerk of this Court on February 16, 1996.

11. The 341(a) meeting of creditors in this case was held in Shelby, North Carolina on April 12, 1996.

12. The Chapter 13 plan of the Plaintiffs and debtors herein was subsequently confirmed by order of this Court filed and entered on May 1, 1996. The confirmation order provided in pertinent part that all "lienholders" could "retain their liens pending payoff or discharge."

13. The Plaintiffs are informed and believe and therefore allege that FMCC received notice of the 341(a) meeting from documents mailed by the Trustee=s office and FMCC also received a "filed" copy of the Order of Confirmation.

14. The Plaintiffs aver upon information and belief that the claim of FMCC was identified as claim number 0006 on the records of the Trustee.

15. The Plaintiffs have been advised by the Trustee and therefore allege that the monthly payments from the Trustee on the FMCC claim were mailed to FMCC at P.O. Box 241950, Charlotte, North Carolina 28224. The Plaintiffs aver that all of these checks were

in fact received, endorsed, deposited and otherwise duly processed by FMCC.

16. The Plaintiffs have been advised and therefore allege that during the pendency of this case the Trustee=s office never received any notice whatsoever of the assignment of the subject claim by FMCC to any other party or entity and that no notice of any such assignment of this claim was ever filed with the Clerk of this Court as required by Rule 3001 of the Federal Rules of Bankruptcy Procedure.

17. The Plaintiffs also aver upon information and belief that during the pendency of their Chapter 13 case numerous documents were served on the Defendant and received by the Defendant including but not limited to the first meeting notice, the Trustee=s motion to allow secured and unsecured claims, the Trustee=s motion for the entry of a Final Order of Discharge, and the Discharge Order itself.

18. The Plaintiffs aver that they made all of the required Chapter 13 plan payments and that they duly completed their Chapter 13 plan. The Plaintiffs further aver that as a result thereof a final Discharge Order was duly entered by this Court on or about March 13, 2001. The Discharge Order provided in pertinent part that the Plaintiffs and debtors herein were "discharged from all debts provided for by the plan." The Plaintiffs aver that this discharge extended to and included the debt to FMCC.

Factual Allegations
(Post-Discharge)

19. The Plaintiffs aver that after this Court entered the Discharge Order in this case the title to the subject motor vehicle was never sent to either the debtors or their attorney, and for this reason, they eventually took this matter up with her Chapter 13 attorney, O. Max Gardner III.

20. On or about April 26, 2001, the attorney for the Plaintiffs submitted via certified mail a demand letter to FMCC requesting the release of the lien on the debtors= motor vehicle within 10 days pursuant to Section 20-58.4 of the North Carolina General Statutes. A copy of said letter is attached hereto as "Exhibit A" and is incorporated herein by this reference.

21. The Plaintiffs aver that the certified letter identified in paragraph 20 was in fact received by the Defendant as evidenced by Postal Service Form 3811 dated May 5, 2001. A copy of this form is attached hereto as "Exhibit B" and is incorporated herein by this reference.

22. The Plaintiffs aver that to date neither they nor their attorney has received the title to the subject vehicle with the lien duly released.

23. The Plaintiffs aver that as a result of the conduct of FMCC they filed a motion to reopen this case with this Court on July 16, 2001, to pursue "discharge violations and to pursue other possible relief."

24. The Plaintiffs aver that on August 14, 2001, this Court entered an order granting the motion to reopen this case.

25. The Plaintiffs aver that under Section 350(b) of the Code "a case may be reopened in the Court in which such case was closed to administer assets, to accord relief to the debtors, or for other cause." The Plaintiffs aver that this case was reopened for all of the reasons provided for in the said Code section.

26. The Plaintiffs allege that prior and subsequent to the reopening of this case they have engaged in numerous meetings with their attorney and members of his staff about this matter.

First Claim for Relief

27. The allegations in paragraphs 1 through 26 of this complaint are realleged and incorporated herein by this reference.

28. The Plaintiffs are informed and believe and therefore allege that the actions of FMCC after receiving notice of the order of discharge entered on March 13, 2001, constitute a gross violation of the discharge injunction as set forth in 11 U.S.C. Section 524.

29. As a result of the above violation of 11 U.S.C. Section 524, FMCC is liable to the Plaintiffs for actual damages, punitive damages and legal fees under Section 105 of Title 11 of the United States Code.

Second Claim for Relief

30. The allegations in paragraphs 1 through 26 of this complaint are realleged and incorporated herein by this reference.

31. The Plaintiffs aver that as a result of the failure of FMCC to release its lien on the title to the subject motor vehicle they have found it necessary to devote countless and unnecessary hours to their efforts to secure such title and that all of this time was unwarranted and unnecessary.

32. The Plaintiffs also aver that they have constantly worried about this situation and have feared that FMCC had some improper motive for holding the said title.

33. The Plaintiffs aver that the actions of the Defendant in this case constitute a clear violation of the provisions of North Carolina General Statute Section 20-58.4 and of Sections 25A-22(b) of the North Carolina Retail Installment Sales Act.

34. The Plaintiffs aver that Section 20-58.4 of the North Carolina General Statutes provides in pertinent part as follows:

"**Release of security interest.** Upon the satisfaction or other discharge of a security interest in a vehicle for which the certificate of title is in the possession of the secured party, *the secured party shall within 10 days after demand and, in any event, within 30 days, execute a release of his security interest*, in the space provided therefore on the certificate or as the Division prescribes, and mail or deliver the certificate and release to the next secured party named therein, or if none, to the owner or other person authorized to receive the certificate for the owner."[emphasis added]

35. The Plaintiffs aver that the Defendant did not comply with this statute after the entry of the Discharge Order in this case.

36. The Plaintiffs aver that the actions of the Defendant in this case have been unlawful in nature and as a result the Plaintiffs are entitled to recover both actual and punitive damages as well as legal fees and expenses as provided for by Sections 25A-44(4) of the North Carolina Retail Installment Sales Act.

Third Claim for Relief

37. The allegations in paragraphs 1 through 26 of this complaint are realleged and incorporated herein by this reference.

38. The Plaintiffs aver that they are "consumers" as that term is defined by Article 2 of Chapter 75 of the North Carolina General Statutes.

39. The Plaintiffs allege that their relationship with the Defendant arose out of a "consumer debt" as that term is defined in Article 2 of Chapter 75 of the North Carolina General Statutes.

40. The Plaintiffs aver that the Defendant was and is a "debt collector" as that term is defined by applicable provisions of Article 2 of Chapter 75 of the North Carolina General Statutes.

41. The Plaintiffs aver that under the provision of Section 75-52 of the North Carolina General Statutes the Defendant were and are prohibited from engaging in any conduct the natural consequences of which is to oppress, harass or abuse any person.

42. The Plaintiffs are informed and believe and therefore allege that the actions and conduct of FMCC were oppressive and abusive in violation of the applicable provisions of Article 2 of Chapter 75 of the North Carolina General Statutes.

43. As a result thereof, the Plaintiffs aver that the Defendant is liable for statutory damages in the sum of no less than $2,000.00 for violation of N.C.G.S. Section 75-50, et seq. and the payment of legal fees and expenses.

Fourth Claim for Relief

44. The allegations in paragraphs 1 through 26 of this complaint are realleged and incorporated herein by this reference.

45. The Plaintiffs are informed and believe and therefore allege that the actions and conduct of the Defendant in this case constitute unfair and deceptive acts and practices in violation of the provisions of Section 75-1.1 of the North Carolina General Statutes. The Plaintiffs specifically allege that the unfair acts and practice of FMCC arose out of its failure to comply with the mandatory provisions of Chapter 20 of the North Carolina General Statutes.

46. As a result of the unfair acts and deceptive practices of FMCC, the Plaintiffs

aver that they are entitled to the recovery of actual and treble damages under the provision of Section 75-16 of the North Carolina General Statutes.

47. As a result of the unfair acts and deceptive practices of the Defendant, the Plaintiffs aver that they are entitled to the recovery of reasonable legal fees under the provisions of Section 75-16.1 of the North Carolina General Statutes.

Fifth Claim for Relief

48. The allegations in paragraphs 1 through 26 of this complaint are realleged and incorporated herein by this reference.

49. The Plaintiffs are informed and believe and therefore allege that the conduct of FMCC in this case has substantially frustrated the discharge order entered in this case and has caused the debtors unwarranted and unnecessary time, effort and expense in seeking to enforce rights guaranteed by the Bankruptcy Code.

50. The Plaintiffs also allege upon information and belief that in order to carry out the provision of the Code and to maintain its integrity this Court must impose actual damages, punitive damages and legal fees against the Defendant pursuant to the provisions of Section 105 of the Code.

51. The Plaintiffs further aver that in order to protect debtors who have completed their Chapter 13 plans and secured a full discharge thereunder this Court must impose sanctions against the Defendant for its misconduct in this case.

Sixth Claim for Relief

52. The allegations in paragraphs 1 through 26 of this complaint are realleged and incorporated herein by this reference.

53. The Plaintiffs aver that the Confirmation Order in this case permitted FMCC to retain the title to the vehicle "pending discharge" of its debt in this case.

54. The Plaintiffs further aver upon information and belief that the Confirmation Order imposed an affirmative duty on FMCC to release its lien on the title to the vehicle and to deliver the said title to the Plaintiffs upon entry of the Discharge Order.

55. The Plaintiffs aver that the failure of FMCC to provide an accurate release of its lien on the said title and to deliver the title to the Plaintiffs in a timely manner post-discharge was and is in violation of the Confirmation Order in this case.

56. As a result, the Plaintiffs aver that they are entitled to the recovery of actual damages, punitive damages and legal fees.

Seventh Claim for Relief

57. The allegations in paragraphs 1 through 26 of this complaint are realleged and incorporated herein by this reference.

58. The Plaintiffs aver that the title to the vehicle in this case was and is property of their Estate in Bankruptcy.

59. The Plaintiffs are informed and believe and therefore allege that the reopening of this case under Section 350(b) of the Bankruptcy Code grants to this Court jurisdiction to administer assets of this case including but not limited to the title to the said vehicle.

60. The Plaintiffs aver that as of the date of the reopening of this case FMCC and its successor(s) in interest were under a direct and affirmative duty to turnover the said title to the vehicle to the Plaintiffs with its lien duly canceled and released.

61. The Plaintiffs aver that the failure of the Defendant to turnover the said title and/ or a Release of Lien violated Section 542 of the Bankruptcy Code.

62. As a result thereof, the Plaintiffs aver that they are entitled to the recovery of actual damages, punitive damages and legal fees.

Eighth Claim for Relief

63. The allegations in paragraphs 1 through 26 of this complaint are realleged and incorporated herein by this reference.

64. The Plaintiffs aver that the title to the vehicle in this case was and is property of their Estate in Bankruptcy.

65. The Plaintiffs are informed and believe and therefore allege that the reopening of this case under Section 350(b) of the Bankruptcy Code grants to this Court jurisdiction to administer assets of this case including but not limited to the title to the said vehicle.

66. The Plaintiffs aver that as of the date of the reopening of this case the Defendant was under a direct and affirmative duty to turnover the said title to the vehicle to the Plaintiffs with its lien duly canceled and released.

67. The Plaintiffs are informed and believe and therefore allege that the failure of the Defendant to immediately turnover the said title to the Plaintiffs constituted an unlawful act to exercise control over property of the Estate in violation of Section 362(a)(3) of the Bankruptcy Code.

68. As a result, the Plaintiffs aver that they are entitled to the recovery of actual damages, punitive damages and legal fees.

WHEREFORE, the Plaintiffs having set forth their claims for relief against the Defendant respectfully pray of the Court as follows:

A. That the Plaintiffs have and recover against the Defendant a sum in excess of $10,000.00 in the form of actual damages;

B. That the Plaintiffs have and recover against the Defendant a sum in excess of

$10,000.00 in the form of punitive damages;

C. That the Plaintiffs have and recover against the Defendant all reasonable legal fees and expenses incurred by their attorney;

D. That this Court enter a standing order requiring all applicable secured creditors to comply with the provisions of N.C.G.S. Section 20-58.4 within 13 days of the service of the discharge order in all Chapter 13 cases or to be subject to civil sanctions for contempt of court;

E. That the Defendant be required to pay to the Plaintiffs as an additional damage award in this case all funds received from the Chapter 13 Trustee during the pendency of the plan in this case;

F. That the Plaintiffs have and recover against the Defendant the sum of $2,000.00 for its violation of N.C.G.S. Section 75-50, et seq.; and

G. That the Plaintiffs have such other and further relief as the Court may deem just and proper.

Date this the 25th day of September 2001.

O. Max Gardner III
Law Offices of O. Max Gardner III, P.C.
Attorney for the Plaintiffs
P.O. Box 1000
Shelby, NC 28151-1000
(704) 487-0616 / Fax (704) 487-0619
N.C. State Bar No. 6164
Primary e-mail: omaxiii@shelby.net

LAW OFFICES
OF
O. MAX GARDNER III, P.C.
AT HISTORIC WEBBLEY
403 SOUTH WASHINGTON STREET
SHELBY, NORTH CAROLINA 28150

Telephone: (704) 487-0616
Facsimile: (704) 487-0619
omaxgardneriii@carolina.rr.com

Mailing Address:
P.O. Box 1000
Shelby, NC 28151-1000

COPY

April 26, 2001

CERTIFIED MAIL--RETURN RECEIPT

Ford Motor Credit Company
Attn: Bankruptcy Unit
PO Box 241950
Charlotte, NC 28224

EXHIBIT A

In the Matter of:
John Elmer Hughes
Gladys Nanney Hughes
116 Pico Street
Shelby, NC 28150
Chapter 13 Case No: 96 40076
File Date: 16 February 1996
SSN: 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 & 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
Our No: 8872
Your No: CH A258 AR44

Dear Sir or Madam:

The above-referenced debtor(s) has completed the required payments under the terms of his confirmed Chapter 13 Plan. Pursuant to Section 20-58.4 of the North Carolina General Statutes, upon the satisfaction or other discharge of a security interest in a vehicle for which the certificate of title is in the possession of the secured party, *the secured party shall within 10 days after demand execute a release of his security interest.* As a result, we are hereby making demand for you to release your lien on the title to the 1989 Ford Festiva motor vehicle and deliver the title to the debtor(s) or to my office within 10 days of the date of your receipt of this letter. If you fail to do so, then we will pursue the claim by way of an adversary proceeding before the United States Bankruptcy Court for the Western District of North Carolina for violation of the provisions of North Carolina General Statute Section 20-58.4, Section 25A-22(b) of the North Carolina Retail Installment Sales Act and the North Carolina Unfair and Deceptive Act and Practices Laws, G.S. § 75-50 et seq. If it becomes necessary to file such a proceeding, we will also seek the recovery of all of our legal fees and expenses incurred in the court action.

Sincerely,

O. Max Gardner III

cc: Steven G. Tate, Trustee
John & Gladys Hughes

8893 Hughes
Title Request

EXHIBIT B

SENDER: COMPLE[redacted]**DELIVERY**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ford Motor Credit Co.
Attn: Bankruptcy Unit
P.O. Box 241950
Charlotte, NC. 28224

A. Received by *(Please Print Clearly)* ARTHUR BROWN

B. Date of Delivery

C. Signature
X Arthur Brown
☑ Agent
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☑ No

CHARLOTTE, NC MAY 2001 USPS

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)* 7000 1670 0003 5158 0328

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

EXHIBIT C

U.S. Postal Service

CERTIFIED MAIL RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

7000 1670 0003 5158 0328

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

Postmark Here

Sent To
FMCC /Bankruptcy

Street, Apt. No.; or PO Box No.
P.O. Box 241950

City, State, ZIP+4
Charlotte, NC. 28224

PS Form 3800, May 2000 See Reverse for Instructions